



**MEMORANDUM OF UNDERSTANDING**  
**between**  
**ENVIRONMENTAL PROTECTION AGENCY REGION VIII**  
**and**  
**USDA-FOREST SERVICE REGION 4**  
**concerning**  
**THE AMERICAN FORK CANYON SITE**

**I. Recitals**

- A. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC §§ 9601- 9675, the President is responsible for responding to releases of hazardous substances to protect the public health or welfare or the environment.
- B. Pursuant to Executive Orders 12580 and 13016, the President delegated authority to conduct various activities under CERCLA to several executive departments and agencies, including the Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA). The delegated authorities include performing investigations, response activities, and cost recovery, entering into agreements with potentially responsible parties (PRPs) to perform investigations and response actions, and issuing unilateral administrative orders (UAOs).
- C. USDA has redelegated its authorities under Executive Orders 12580 and 13016 to the USDA Forest Service (Forest Service) with respect to land and facilities under Forest Service authority. 7 CFR § 2.60(a)(40).
- D. In general terms, EPA has been delegated the President's CERCLA authority where a release or threat of release of hazardous substances is on private property. With certain limitations, the Forest Service has been delegated the President's CERCLA authority where a release or threat of release of hazardous substances is on or the sole source of the release is from a facility under the jurisdiction, custody or control of the Forest Service, such as National Forest System land (NFS land).
- E. The American Fork Canyon Site (the Site) is located approximately thirty miles south of Salt Lake City, Utah. The Site is located within the American Fork Mining District in the Uinta National Forest, Utah County, Utah. The Site includes but is not limited to the Pacific Mine (also known as the Blue Rock Group), the Bog Iron and Lower Bog Mines, the Iron King/Scotchman Mine, the Dutchman Flat area, various mine sites on Miller Hill, the Globe Mine and the Yankee Mines. The Site includes NFS land and private property. A map of the site showing these features is attached to and incorporated into this MOU as Attachment A.

- F. There are numerous waste rock piles, tailings piles and draining adits on the Site. Heavy metals are present in the mine waste piles. The metals are being released over time into the adjacent environment. Water quality standards are being compromised in the North Fork of American Fork River and its tributaries such as Mary Ellen Gulch. These releases have a demonstrated adverse effect on the macroinvertebrate and fish populations in the River. EPA and the Forest Service plan to address these releases of hazardous substances into the environment through the exercise of the agencies' respective CERCLA authorities.
- G. The purpose of this MOU is to provide a framework for coordinating between EPA and the Forest Service related to response actions at the Site. This MOU also provides a process for resolving disputes between EPA and the Forest Service that may arise during such response actions. This MOU is not intended to address coordination regarding natural resource damage issues.

## **II. Agreements**

- A. EPA and the Forest Service have designated the following persons to be involved in the day to day coordination, communication and decision making regarding the exercise of the agencies' respective authorities at and near the Site:

### **EPA On-Scene Coordinator (EPA OSC)**

Pete Stevenson  
Mail Code: 8EPR-SA  
United States Environmental Protection Agency  
999 18<sup>th</sup> Street  
Denver, CO 80202-2405  
Phone: (303) 312-6799  
Fax: (303)  
E-mail:

### **Forest Service On-Scene Coordinator (FS OSC)**

Ted V. Fitzgerald  
Uinta National Forest  
88 W. 100 N  
Provo, Utah 84601  
Phone: (801) 342-5171  
Fax: (801) 342-5144  
E-mail:

If EPA or the Forest Service change their representatives, the agency making the change will notify the other agency as soon as possible.

- B. EPA and the Forest Service will determine by mutual agreement which agency will be the lead agency for each parcel, project or operable unit within the Site. An initial determination of lead agency status for several projects is included in this MOU as Attachment B. Additions or revisions to this listing will be made as necessary by mutual agreement of EPA and the Forest Service.
- C. The EPA OSC and the FS OSC shall coordinate with each other to implement response activities at the Site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings related to activities at the Site, or any significant on-Site activities. In most cases, reasonable prior notice shall be considered seven (7) days. In the event that a meeting needs to be scheduled on shorter notice, the FS OSC or the EPA OSC shall contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting.
- D. A schedule of activities for the Site will be established by mutual agreement of EPA and the Forest Service. The schedule will be for planning purposes and will be updated periodically to reflect actual progress on work at the Site and current projections.
- E. EPA and the Forest Service will supply to each other copies of all documents related to Site work. Such documents shall include project proposals, sampling and analysis plans and work plans. Also, the EPA OSC and the FS OSC will provide each other with copies of documents needed to fulfill the purposes of this agreement. The EPA OSC and the FS OSC will cooperatively determine which documents related to the Site are to be copied and provided to the other agency, either directly by the agencies or by third parties. Where EPA or the Forest Service need to obtain comments of the other party on a document, the EPA OSC and FS OSC will cooperatively determine how and when those comments will be provided.
- F. The EPA OSC and the FS OSC should communicate regularly to review work status and resolve any existing or anticipated technical issues. Monthly status calls will be held and will include the EPA OSC and the FS OSC. PRP and contractor representatives will be included when appropriate. When on-Site work is in progress, these calls will be held at weekly intervals.
- G. EPA and the Forest Service shall develop a coordinated position on enforcement against PRPs at the Site. The Forest Service shall provide to EPA copies of the draft PRP Search Report for the Site, prepared by TechLaw, Inc. and dated January 20, 2000. The Forest Service shall also provide to EPA copies of all CERCLA § 104(e) Information Request letters that the Forest Service has issued and the responses to those letters. EPA and the Forest Service shall develop a coordinated position on additional and follow-up PRP search work that needs to be performed. EPA and the Forest Service shall also develop a coordinated

position on enforcement against any PRPs identified in the search work.

- H. For response actions on any parcels, projects or operable units that include National Forest System land and private property, the EPA OSC and the FS OSC will co-sign or concur on technical correspondence, including, but not limited to, comments on deliverable that might be required from PRPs, and approval of sampling and analysis plans.
- I. For response actions on any parcels, projects or operable units that include National Forest System land and private property, EPA and the Forest Service will jointly approve the following major decision points:
  - 1. The scope and extent of any additional Preliminary Assessment or Site Inspection work;
  - 2. Enforcement activities against PRPs including the negotiation of Administrative Orders on Consent or issuing Unilateral Administrative Orders;
  - 3. The scope and extent of Engineering Evaluation and Cost Analysis work;
  - 4. Community relations activities such as the community relations plan, public notices and public meetings;
  - 5. Preparation of the administrative record;
  - 6. Selection of any response actions, including, but not limited to selection of Applicable or Relevant and Appropriate Requirements (ARARs), and selection of post-removal Site control requirements for completed response actions;
  - 7. Any Action Memoranda;
  - 8. Design plans for implementing a jointly selected response alternative;
  - 9. Construction contracts and change orders;
  - 10. Certifications of completion issued for response actions at the Site.
- J. The FS OSC should advise the EPA OSC regarding any issues and concerns of special interest to the Forest Service. The FS OSC will assist the EPA OSC in identifying and communicating with Forest Service personnel that can provide information concerning the Site.

- K. Resolution of and communication regarding legal issues will be coordinated among EPA counsel and USDA counsel and, as appropriate, Department of Justice attorneys.

### **III. Dispute Resolution**

- A. Informal dispute resolution, through heightened consultation between the EPA OSC and the FS OSC should resolve the vast majority, if not all, technical issues between EPA and the Forest Service.
- B. If the EPA OSC and the FS OSC do not reach agreement on a disputed item arising from activities at the Site, the issue will be elevated to the FS OSC's and the EPA OSC's direct supervisors within seven days. If the Forest Service and EPA direct supervisors are unable to reach agreement, the issue will be further elevated to the Regional Forester for the Forest Service and the Regional Administrator for EPA.

### **IV. Limitations and Duration of Agreement**

- A. The Forest Service and EPA reserve their rights and authorities under CERCLA, as well as other laws, the National Contingency Plan, and applicable Executive Orders. No provision of this MOU may be used to limit those rights and authorities or to prejudice what those rights and authorities may be.
- B. The Parties recognize that each must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the Forest Service or EPA to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 USC § 1341.
- C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority.
- D. This MOU shall not be deemed to create any right enforceable in any court against the United States, its agencies or any other person.
- E. This MOU terminates 5 years after the effective date. Either party may terminate this MOU upon 30 days written notice. Prior to termination, this MOU may be

modified or extended only upon the written agreement of both parties.

- F. This MOU maybe executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.
- G. This MOU is effective upon the date signed by the last of the parties.

The undersigned parties hereby agree to the terms and conditions of this Memorandum of Understanding.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

**UNITED STATES DEPARTMENT OF  
AGRICULTURE, FOREST SERVICE**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

## ATTACHMENT A

(Site Map)



## ATTACHMENT B

### Lead Agency Status for Projects Within the American Fork Canyon Site

<b>Project, Parcel or Operable Unit</b>	<b>Lead Agency</b>
Pacific Mine, aka the Blue Rock Group	
Bog Mine	
Lower Bog Mines	
Iron King/Scotchman Mine	
Smelter Site	
Dutchman Flat	USDA Forest Service
Miller Hill Area, Miller Hill Tunnel Area	
Globe Mine	USEPA
Yankee Mine	USEPA

## **AGREEMENT**

**Among**

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE,**

**and**

**THE CHAPTER 7 BANKRUPTCY ESTATES OF  
PEGASUS GOLD MONTANA MINING, INC. AND PANGAEA EXPLORATIONS, INC.**

**Regarding**

**LUTTRELL PIT MINE WASTE REPOSITORY**

### **I. INTRODUCTION**

1. This Agreement ("Agreement") is made and entered into among the United States Environmental Protection Agency ("EPA"), the United States Department of Agriculture, Forest Service ("FS"), and Kelvin J. Buchanan in his capacity as trustee ("Trustee") for the Chapter 7 Bankruptcy Estates of Pegasus Gold Montana Mining, Inc. ("PGMMI") and Pangea Explorations, Inc. ("PEI") (collectively the "Estates") and not in his individual capacity, collectively, the "Parties."

2. In response to the release or threatened release of hazardous substances from abandoned mine waste at or from the Upper Tenmile Creek Mining Area NPL Site and the Basin Mining Area NPL Site, EPA has undertaken Response Actions and will undertake additional Response Actions at these sites pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604. FS, as a land manager of

property within the boundaries of these sites, intends to use its CERCLA Section 104 authorities to address releases of hazardous substances from abandoned mine waste on lands within its custody, jurisdiction or control in the Upper Tenmile Creek, Upper Boulder River, Upper Little Blackfoot River, Prickly Pear Creek, Elkhorn Creek, and nearby watersheds. EPA, with the assistance of the State of Montana Department of Environmental Quality and the FS, have determined that the Luttrell Pit, located within the Basin Creek Mine site, is the most suitable repository for the abandoned mine waste to be removed from the area pursuant to CERCLA response actions.

3. The Basin Creek Mine site is located approximately 20 miles southwest of Helena, Montana (See Exhibit 1). The Basin Creek Mine was owned and operated by Pegasus Gold Montana Mining, Inc. ("PGMMI"), and Pangea Explorations, Inc. ("PEI"), from 1989 until January 15, 1998. Mining operations ceased in 1991, and PGMMI began reclaiming the site pursuant to the Montana Mine Reclamation Act, MCA 82-4-301, et seq. On January 16, 1998, PGMMI and PEI filed for Chapter 11 bankruptcy protection. On December 30, 1998, Kelvin J. Buchanan was designated Trustee for the Bankruptcy Estates of PGMMI and PEI (collectively "the Estates"). On January 14, 1999, the PGMMI and PEI proceedings were converted to a Chapter 7 bankruptcy proceeding. "In Re: Beal Mountain" Case No. BK-N-98-30090-GWZ (D. Nev.). Because of their financial condition, the Estates had insufficient assets to continue reclamation. Consequently, CNA Surety Co., PGMMI's surety, has paid to the State of Montana \$3.825 million to fund remaining reclamation activities at the Basin Creek Mine.

4. EPA, the State, and the Estates entered into a cooperative agreement to address the interaction and coordination between EPA's CERCLA response activities and State-approved

reclamation activities at the Basin Creek Mine ("the Cooperative Agreement"). The Cooperative Agreement is attached hereto as Exhibit 2.

5. The Estates, through the Cooperative Agreement and conveyance of an environmental protection easement ("Easement") to Lewis and Clark County, have granted the United States, acting through EPA, access to the Luttrell Pit mine waste repository and other areas at the Basin Creek Mine to facilitate Response Actions (See Exhibit 3). The Easement runs with the land, and therefore will not terminate upon closure of the Estates.

6. The Easement will be amended to provide for access to certain property on the Basin Creek Mine site, including the Luttrell Pit mine waste repository, by the FS, subject to EPA approval. This document sets forth the terms and conditions required for such approval.

7. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purposes of this Agreement include, but are not limited to: (1) provide for access to the Luttrell Pit mine waste repository and ancillary facilities within the Basin Creek Mine site ("Site") by FS, acting in its regulatory capacity to facilitate the cleanup of abandoned mines on lands under its jurisdiction, custody or control in the Upper Tenmile Creek watershed, Upper Boulder River watershed, Upper Little Blackfoot River watershed, Prickly Pear Creek watershed, Elkhorn Creek watershed and nearby watersheds pursuant to CERCLA; (2) set forth the respective obligations and responsibilities of EPA and FS for implementing the Response Actions; and (3) allocate among the Parties Past Response Costs and Future Response Costs.

## II. AUTHORITY

8. This Agreement is entered into pursuant to CERCLA, 42 U.S.C. §§ 9601, et seq., Executive Order 12580 (Jan. 23, 1987), and the Cooperative Funds and Deposits Act of 1975,

Public Law 94-148, 16 U.S.C. § 565a-1 through a-3. As representative of the Estates, the Trustee is the proper party to this Agreement. 11 U.S.C. § 323.

### III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

(a) "Cell #1" means the first mine waste containment cell constructed by EPA in the Luttrell Pit mine waste repository.

(b) "Cell #2" means the second mine waste containment cell to be constructed by EPA in the Luttrell Pit mine waste repository.

(c) "Existing Contamination" means any hazardous substances, pollutants or contaminants, present or existing on or under the Basin Creek Mine site prior to August 23, 1999, the date on which EPA began placing waste in the Luttrell Pit mine waste repository to facilitate CERCLA Response Actions. "Existing Contamination" includes, but is not limited to, current and future releases of such materials from Leach Pad #1, Leach Pad #3, Paupers Pit, and adits at the Site.

(d) "Future Response Costs" means all direct and indirect costs of removal or remedial action relating to the Luttrell Pit mine waste repository incurred on or after the effective date of this Agreement by the United States Government not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, including costs required to maintain the effectiveness of the response actions at the Site incurred during remedial action and costs of enforcement activities related thereto. "Future Response Costs" does not

include Operation and Maintenance costs as defined below.

(e) "National Forest System" or "NFS" means the units of federally owned forest, range, and related lands defined and described in 16 U.S.C. § 1609(a).

(f) "Operation and Maintenance" or "O&M" means all post remedial action activities required to maintain the effectiveness of the Response Actions at the Site as required under the Operation and Maintenance Plan to be developed for the Site.

(g) "Parties" means EPA, FS and the Trustee.

(h) "Past Response Costs" means all direct and indirect costs of removal actions relating to the construction of Cell #1 and the water management features associated with the Luttrell Pit mine waste repository, including the leachate pond, stormwater pond, and land application discharge system, incurred prior to the effective date of this Agreement by EPA.

(i) "Post Removal Site Control" means those activities that are necessary to maintain the effectiveness and integrity of a Fund-financed removal action following its completion.

(j) "Project Manager" means any On Scene Coordinator or Remedial Project Manager for EPA or FS, as provided for in the NCP.

(k) "Response Actions" means CERCLA response actions which are properly documented in a decision document under CERCLA and the NCP, 40 CFR Part 300, and shall include the action described in the EPA Action Memorandum attached hereto as Exhibit 4.

(l) "Site" means the Basin Creek Mine site, encompassing approximately 1,323 acres, located approximately 20 miles southwest of Helena and 14 miles north of Basin, Montana, in Lewis and Clark and Jefferson Counties, Montana, and depicted generally on the map attached as Exhibit 1. The Site lies within the boundaries of the Upper Tenmile Creek Mining Area and

Basin Mining Area Superfund sites which are listed on the National Priorities List.

(m) "State" means the State of Montana.

#### IV. ACCESS and EASEMENT AMENDMENT

10. The Trustee has agreed to amend the Easement Agreement to provide for access to certain property on the Basin Creek Mine site, including the Luttrell Pit mine waste repository, to the FS, subject to EPA approval. The Parties acknowledge that amendment of the Easement Agreement is subject to approval of the Bankruptcy Court. Access to the Luttrell Pit mine waste repository and ancillary facilities shall be provided by the Easement, as amended. Each Party is subject to the Easement requirements that the waste disposed of in the Luttrell Pit mine waste repository be limited to waste from abandoned mines. Each party shall certify that the waste it is disposing of at the Luttrell Pit mine waste repository does not contain hazardous waste, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq. ("RCRA") and/or the Montana Hazardous Waste Act, §§ 75-10-401, et seq., MCA, ("MHWA") and the applicable RCRA and MHWA implementing regulations. The Parties recognize that most of the waste to be disposed of in the Luttrell Pit mine waste repository will be solid wastes which are not hazardous wastes, including, but not limited to "Bevill exempt" wastes as defined in the applicable RCRA and MHWA regulations at 40 C.F.R. § 261.4(b)(7) and ARM § 17.54.307(2)(d), respectively. Access to the Luttrell Pit mine waste repository by each Party is subject to EPA approval, and EPA retains the ability to determine what is disposed of based on a waste profile. The FS specifically acknowledges that its access to and use of the Luttrell Pit is subject to those obligations and covenants of the United States for the benefit of the Estates set forth in the Cooperative Agreement.

## **V. CONSOLIDATION OF SITES**

11. EPA approval of access to the Luttrell Pit mine waste repository with respect to each abandoned mine outside the boundaries of the Upper Tenmile Creek Mining Area or Basin Mining Area NPL sites at which FS is conducting a Response Action shall be accompanied by a determination pursuant to Section 104(d)(4) of CERCLA that such facilities are treated as one site for purposes of CERCLA Section 104. EPA shall provide FS with such a determination when consulting with FS on its Action Memoranda.

## **VI. WORK TO BE PERFORMED**

12. Pursuant to its CERCLA Response Action authorities, EPA will perform the following actions:

(a) EPA will design, prepare, and maintain the Luttrell Pit as a repository for mining wastes to include waste rock, mine tailings and contaminated debris from abandoned mines in the Upper Tenmile Creek, Upper Boulder River, Upper Little Blackfoot River, Prickly Pear Creek watershed, Elkhorn Creek watershed and nearby watersheds as part of the Response Actions implemented by EPA or FS, provided those various Response Actions are documented under CERCLA and the NCP in an Action Memorandum or other appropriate decision document under CERCLA and the NCP. EPA activities will include implementation of all necessary water management operations and monitoring in the areas identified in EPA's Post Mine Land Use Application, attached hereto as Exhibit 5.

(b) EPA shall provide FS with notice of the anticipated closure date for the Luttrell Pit mine waste repository. If FS wishes to continue using the mine waste repository beyond EPA's anticipated closure date, FS may extend the use time frame by entering into an



agreement with EPA to assume management and closure responsibilities. Otherwise, EPA will close the areas of the Site identified in EPA's Post Mine Land Use Application, including the Luttrell Pit mine waste repository and will notify FS when the closure has been completed.

(c) Section 104(c)(3) of CERCLA provides that EPA cannot implement a fund-financed remedial action at a site unless the State assures all O&M for the action. The Parties recognize that the State has not yet agreed to accept this responsibility. If O&M responsibility has not been assumed by the State at the time of Luttrell Pit closure, the Parties will make every effort to address the implementation of Post Removal Site Control as an amendment to this Use Agreement.

#### VII. ALLOCATION OF RESPONSE COSTS

13. Except as provided in subparagraph d. of this paragraph, FS agrees to pay a proportionate share of Future Response Costs, Past Response Costs, and O&M costs on the basis of the volume of mine waste from National Forest System ("NFS") lands that it contributes to the Luttrell Pit mine waste repository. Specific FS payment obligations are set forth in subparagraph (a) through (e) of this paragraph.

(a) For Cell #1 of the Luttrell Pit mine waste repository: EPA shall prepare a cost accounting detailing the Past Response Costs incurred in 1999 for Cell #1 and documenting FS's share of these costs based on FS's projected volume of wastes to be contributed from NFS lands to Cell #1. Not more than 45 days after receipt of EPA's billing, FS shall reimburse EPA in the manner specified in subparagraph (e) below. At the end of the fiscal year 2000 construction season, EPA shall document FS's actual waste volume placed into Cell #1. If FS's actual volume exceeds its projected volume, FS shall pay the balance of its proportionate share of Cell #1 costs

not more than 120 days after receipt of the reconciliation from EPA. If FS's actual volume is less than its projected volume, FS's excess payment shall be carried over as credit to be applied to the following year's payments as required under this Agreement.

(b) For Cell #2 and subsequently constructed cells: On or about January 31st of each year, EPA shall prepare a cost accounting detailing the response costs expended by EPA associated with each cell and documenting FS's share of these costs, based on the projected volume (proportionate share) of wastes to be contributed from NFS lands to each cell that fiscal year. Not more than 120 days after receipt of EPA's accounting, FS shall reimburse EPA in the manner specified in subparagraph (e) below. At the end of each construction season, EPA shall document FS's actual waste volume placed into the cells. If FS's actual volume exceeds its projected volume, FS shall pay the balance of its proportionate share of costs not more than 120 days after receipt of the reconciliation from EPA. If FS's actual volume is less than its projected volume, FS's excess payment shall be carried over as credit to be applied to the following year's payment as required under this Agreement.

(c) For all other Future Response Costs, including costs associated with any releases of hazardous substances from the Luttrell Pit mine waste repository that may occur, EPA shall prepare a cost accounting detailing the response costs expended and documenting FS's proportionate share of these costs. Not more than 120 days after receipt of EPA's accounting, FS shall reimburse EPA in the manner specified in subparagraph (e) below.

(d) FS shall pay 50% of Past Response Costs associated with the water management features (including leachate pond, storm water pond and land application discharge system), which shall be reimbursed to EPA over a period of 5 years starting in fiscal year 2000. EPA

shall prepare a cost accounting detailing the response costs expended and documenting FS's share of these costs. Not more than 45 days after receipt of EPA's accounting, FS shall reimburse EPA for 1/5 of its total share in the manner specified in subparagraph (e) below. In subsequent years, EPA shall submit annual billings to FS, which shall be payable not more than 120 days after receipt of such billings.

- (e) All payments will be made by check or electronic transfer and sent to:  
Hazardous Substances Superfund  
Attn: Superfund Accounting  
Lockbox 360859  
Pittsburgh, PA 15251-6859

Confirmation of all fund transfers shall be sent to Carol Pokorny at the following address:  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 500  
Denver, CO 80202  
Mail Code ENF-T

Payments made under this Agreement will be deposited into the Luttrell Pit Mine Waste Repository Special Account established pursuant to Section 122(b)(3) of CERCLA. Such payments shall be retained and used to conduct or finance response actions and, if necessary, Post-Removal site control, at or in connection with the Luttrell Pit mine waste repository. Since EPA will directly fund construction and operation of the Luttrell Pit mine waste repository, EPA will make no payments into the Luttrell Pit Mine Waste Repository Special Account pursuant to this Agreement.

14. The Parties agree to calculate the actual volume of mine waste contributed to the Luttrell Pit mine waste repository by agreeing to a nominal waste volume per truck (based on the type of haul trucks used) and an exact accounting of the trucks sent to the repository.

#### VIII. FUNDING

15. Failure by FS to meet its payment obligations as specified in Section VIII of this Agreement will preclude FS access to the Luttrell Pit mine waste repository until such payment is made. The Parties recognize and agree that each Party must operate within the specific requirements of its respective budget process and legal restrictions concerning the obligation of funds. No provision of this Agreement shall be construed to require EPA or FS to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, in any fiscal year for actions subject to this Agreement.

16. FS agrees not to assert any direct or indirect claims for reimbursement for expenditures associated with its allocated share from the Hazardous Substance Superfund.

#### IX. ROLE OF STATE

17. The Parties recognize that a modification of this Agreement or a separate agreement between the Parties and the State should be negotiated to obtain the State's assurances regarding O&M as provided in Section 104(c)(3) of CERCLA. The FS's allocation of Future Response Costs and O&M costs, as provided in this Agreement, shall be recognized and honored in any future agreement with the State regarding allocation of responsibilities. Nothing in this Agreement is intended to relieve the State of its responsibilities under Section 104(c)(3) of CERCLA.

#### X. MODIFICATIONS

18. Modifications to any plan or schedule pertaining to an EPA Response Action may be made in writing by EPA's Project Manager or at the EPA Project Manager's oral direction. Modifications to a provision in any plan or schedule pertaining to a FS Response Action relating to placement of mine waste in the Luttrell Pit mine waste repository may be made by the FS

Project Manager. Modifications to such a provision in a plan or schedule relating to placement of mine waste in the Luttrell Pit mine waste repository shall be subject to the approval of EPA's Project Manager. If a Project Manager makes an oral modification to a plan or schedule, it will be memorialized in writing within 15 days; provided, however, the effective date of the modification shall be the date of the Project Manager's oral direction. Any other requirements of this Agreement may be modified in writing by mutual agreement of the Parties.

#### **XI. DISPUTE RESOLUTION**

19. If a dispute arises under this Agreement that is not resolved informally between the Parties, the Parties agree to use the following dispute resolution procedure:

(a) Each Party will provide a written statement of its position with respect to the dispute, along with any rationale or supporting documents, to the other Party. The Parties will engage in discussions in an attempt to arrive at a consensus and resolve the dispute.

(b) If no resolution is reached within thirty (30) calendar days of receipt of the Parties' statements of position with respect to the dispute, then the dispute will be elevated to the Parties' respective local supervisory officials, or their designees. The local supervisory official or appropriate regional program official for EPA and FS will engage in discussions in an attempt to arrive at a consensus. If consensus is not achieved, the Parties will refer the matter in accordance with subparagraph (c) of this paragraph within thirty (30) calendar days.

(c) Any matter referred under subparagraph (b) of this paragraph will be elevated to senior state or regional officials for EPA and FS, as designated by each of the Parties, who will resolve the matter together and transmit their determination in written form to the Parties involved. In the case of EPA, the appropriate official is the Regional Administrator or

his or her designee. In the case of FS, the appropriate official is the USDA Undersecretary for Natural Resources and Environment or his or her designee.

(d) The dispute resolution time limits set forth above may be extended upon the mutual agreement of the Parties.

(e) Notwithstanding the foregoing, the Parties agree and acknowledge that the Trustee does not waive recourse to the U.S. Bankruptcy Court, District of Nevada, as the appropriate forum for resolution of disputes relating to the Estates.

## XII. DUE CARE/COOPERATION

20. The Parties shall exercise due care with respect to contamination located at the Site and shall comply to the extent required by the NCP with all applicable and relevant and appropriate requirements ("ARARs"). The Parties agree to act in a manner consistent with the Cooperative Agreement that provides for EPA, the State and the Estates to coordinate reclamation work and Response Actions at the Site. If any of the Parties becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, that Party shall immediately notify EPA of such release or threatened release.

21. The Parties shall develop a plan for implementing Response Actions on an annual basis and shall make efforts to obtain funding to ensure that all Response Actions are performed and the Luttrell Pit mine waste repository is seasonally closed within a period of time mutually acceptable to the Parties. The annual plans shall be developed with the goal of allowing EPA to adequately prepare areas to receive the material into the Luttrell Pit mine waste repository.

22. The Parties agree to meet by February 1<sup>st</sup> of each year to evaluate the amount of waste anticipated to be shipped to the repository the next ensuing construction season.

### XIII. EFFECT OF AGREEMENT

23. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which any of the Parties may have against any person, firm, corporation or other entity not a party to this Agreement.

24. Nothing in this Agreement shall in any way restrict or limit the nature or scope of Response Actions which may be taken or be required by the Parties in exercising their authority under Federal or state law.

25. This Agreement shall not be deemed to create any right, benefit, or trust obligation, either substantive or procedural, enforceable by any person or entity in any court against the United States, its agencies, its officers, or any other person.

### XIV . PARTIES BOUND

26. This Agreement shall apply to and be binding upon the Parties. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party. Notwithstanding closure of the Estates, the obligation of the Parties would remain unaffected.

### XV. DOCUMENT RETENTION

27. The Parties agree to retain all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Site, for a term consistent with the

duration required by the applicable federal records retention schedules. The Parties agree to make such records available to each other and provide each other with an opportunity to copy any documents at the expense of the requesting Party upon request, unless documents are subject to special restrictions, such as confidential business information (CBI), or are exempted from disclosure by statute such as the Privacy Act.

#### XVI. NOTICES AND SUBMISSIONS

28. Whenever, under the terms of this Agreement, written notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and FS.

As to EPA: Steven Way, EPR-SA  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street - Suite 500  
Denver, CO 80202

As to FS: Ray TeSoro  
USDA, Forest Service  
P.O. Box 7669  
Missoula, MT 59807

As to the Estates: Kelvin J. Buchanan, Trustee  
for the Chapter 7 Bankruptcy Estates of  
Pegasus Gold Montana Mining, Inc. and  
Pangea Explorations, Inc.  
c/o HB Engineering Group  
575 Forest Street, #100  
P.O. Box 2391  
Reno, NV 89505-2391

and

Sylvia Harrison, Esq.  
McDonald Carano Wilson McCune



P.O. Box 2670

Reno, NV 89505

**XVIII. EFFECTIVE DATE**

29. The effective date of this Agreement shall be the date the Agreement is fully executed.

**XIX. EXHIBITS**

30. Exhibit 1 is the map depicting the Site.
31. Exhibit 2 is the Cooperative Agreement.
32. Exhibit 3 is the Environmental Protection Easement and Declaration of Restrictive Uses.
33. Exhibit 4 is the EPA Action Memorandum.
34. Exhibit 5 is the EPA Post Mine Land Use Application.

**LUTTRELL PIT USE AGREEMENT**

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

\_\_\_\_\_  
Max H. Dodson  
Assistant Regional Administrator  
Region VIII

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

BY:

\_\_\_\_\_  
Dale N. Bosworth  
Regional Forester  
Northern Region

\_\_\_\_\_  
Date

THE ESTATES

BY:

---

Kelvin J. Buchanan

Date

Trustee for the Chapter 7 Bankruptcy Estates  
of Pegasus Gold Montana Mining, Inc. and  
Pangea Explorations, Inc.

luttrelluse.525.wpd